

EXHIBIT 1

PUBLIC VERSION

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION
3

4 -----
5 IN RE: HIGH-TECH EMPLOYEE)
6 ANTITRUST LITIGATION) No. 11-CV-2509-LHK
7 -----

8
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11 VIDEOTAPED DEPOSITION OF EDWARD LEAMER
12 San Francisco, California
13 Friday, October 26, 2012
14 Volume I
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20 Reported by:
21 ASHLEY SOEVYN
22 CSR No. 12019
23 Job No. 1545691
24

25 PAGES 1 - 476

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1 MR. GLACKIN: Objection, vague, 08:19:35

2 mischaracterizes. 08:19:37

3 BY MR. PICKETT: 08:19:38

4 Q. That's the second part of the analysis? 08:19:38

5 A. I also don't accept their word of member, 08:19:42

6 that phrase should not be added. I was asked to do 08:19:45

7 it to answer the question as it's phrased here. 08:19:50

8 Q. Let's do this -- (Cross-talking.) 08:19:53

9 A. With this question, if that's the -- if 08:19:55

10 that's what you're asking me, was I provided this 08:19:58

11 question, the answer is yes. 08:20:01

12 Q. So let's go back. It's a two-part analysis 08:20:02

13 as reflected in 10a and 10b of your report, 08:20:05

14 correct? 08:20:09

15 A. That's correct. 08:20:09

16 Q. And as to whether you were looking at 08:20:10

17 quantifying the amount of suppressed compensation 08:20:14

18 suffered by a particular group, you're saying you 08:20:16

19 only looked at whether each class -- you could 08:20:20

20 quantify the amount of suppressed compensation 08:20:24

21 suffered by each class, not each class member? 08:20:27

22 A. That's correct. 08:20:31

23 Q. So you haven't looked at whether there is a 08:20:32

24 class-wide method capable of quantifying the amount 08:20:34

25 of suppressed compensation suffered by each class 08:20:38

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1 member? 08:20:41

2 MR. GLACKIN: Objection, vague. 08:20:41

3 THE WITNESS: That was not my task. 08:20:44

4 BY MR. PICKETT: 08:20:47

5 Q. So that would be, "Yes, I have not looked 08:20:47

6 at that"? 08:20:50

7 A. That's correct. 08:20:51

8 Q. And when you looked at the method capable 08:20:56

9 of quantifying the amount of suppressed compensation 08:21:02

10 suffered by each class, is that reduction an 08:21:05

11 aggregate number for each class? 08:21:14

12 A. Well, I provided numbers defendant by 08:21:20

13 defendant. 08:21:25

14 Q. Right. Year by year a percentage -- 08:21:25

15 (Cross-talking.) 08:21:27

16 A. Year by year -- (Cross-talking.) 08:21:27

17 Q. And that was year by year then, an 08:21:29

18 aggregate number for the whole class? 08:21:31

19 A. Defendant by defendant. 08:21:35

20 Q. And you haven't examined whether individual 08:21:40

21 class members, defendant by defendant, year by year, 08:21:45

22 were impacted equally? 08:21:50

23 A. Well, in answering that question, I have 08:21:54

24 done a little bit of work on the -- on 08:21:55

25 distinguishing members of the class, if you look at 08:22:01

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1 common proof, so I'm not sure. 08:23:23

2 BY MR. PICKETT: 08:23:26

3 Q. It refers to a reliable class-wide or 08:23:26

4 formulaic method. Do you see that? 08:23:29

5 A. I do see that. 08:23:30

6 Q. And do you not think that's class -- that's 08:23:31

7 a proof common to the class? 08:23:33

8 A. Well, I am not a lawyer, I don't know 08:23:35

9 whether I want to put words into your mouth or into 08:23:38

10 an attorney's mouth, but these are the words that I 08:23:42

11 took to be my task and I followed that out. 08:23:43

12 Q. Your conduct regressions go to step one, 08:23:45

13 correct? 08:23:48

14 MR. GLACKIN: Objection, vague. 08:23:48

15 THE WITNESS: No. 08:23:49

16 BY MR. PICKETT: 08:23:54

17 Q. No? 08:23:54

18 A. They contribute to the argument, one of the 08:23:55

19 things that contributes, but the conduct 08:23:57

20 regressions -- if you're talking about the 08:23:59

21 regressions that use the conduct variable, that has 08:24:00

22 to do with the formulaic method of estimating the 08:24:03

23 amount of suppression of compensation, which was 08:24:06

24 task b. 08:24:09

25 Q. When you say, "all or most members of each 08:24:10

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1	Q. And what percentage is most?	08:30:53
2	MR. GLACKIN: Objection, asked and	08:30:54
3	answered.	08:30:57
4	THE WITNESS: That suggests a precision	08:30:57
5	which this evidence does not allow.	08:31:00
6	BY MR. PICKETT:	08:31:03
7	Q. Give me a range?	08:31:03
8	MR. GLACKIN: Objection, asked and	08:31:04
9	answered.	08:31:04
10	THE WITNESS: Greater than 50 percent.	08:31:04
11	BY MR. PICKETT:	08:31:07
12	Q. Thank you. Move on to a newer topic.	08:31:07
13	Do you agree that each of the seven	08:31:14
14	defendants compete in one or more labor markets that	08:31:15
15	are far broader than the total seven companies?	08:31:20
16	A. Well, you know, we're going to get in	08:31:25
17	trouble with words all the time. I would definitely	08:31:28
18	agree that they hire employees, not just from some	08:31:30
19	defendants, but much more broadly.	08:31:34
20	Q. Do you know how big the labor pool is for	08:31:42
21	each of the seven defendants?	08:31:47
22	A. I have a rough idea.	08:31:50
23	Q. What is that?	08:31:51
24	A. I have a rough idea in terms of the amount	08:31:52
25	of interdefendant movement has occurred versus the	08:31:55

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1	econometric equation.	08:41:53
2	Q. But that just -- it shows an average,	08:41:55
3	doesn't it?	08:41:57
4	MR. GLACKIN: Objection --	08:41:58
5	BY MR. PICKETT:	08:41:59
6	Q. Pure regression analysis just shows an	08:41:59
7	average year by year, defendant by defendant?	08:42:01
8	A. Shows an average? It's used to compute an	08:42:03
9	average. It allows you to distinguish the impact by	08:42:08
10	age, for example. But what I've done is I've	08:42:14
11	computed an impact average across age, so there's a	08:42:17
12	control for difference in age composition of the	08:42:21
13	various defendants.	08:42:27
14	Q. Does the regression analysis allow you to	08:42:28
15	pinpoint what an individual class member's damages	08:42:32
16	might be?	08:42:35
17	A. Well, it could, but it would have to be	08:42:35
18	conducted in a much, more complete way. I will give	08:42:38
19	you an example, which is -- you got to know -- you	08:42:40
20	got to know a lot more details about the individuals	08:42:43
21	than I have in that equation in order to have any	08:42:47
22	kind of sensible statement with regard to individual	08:42:49
23	by individual.	08:42:51
24	For example, let me complete this, please.	08:42:52
25	For example, an education is certainly going to be	08:42:54

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1 material consideration in talking about the impact 08:42:58
2 of cold calling. I've studied equations that had 08:43:00
3 the education variables included. But I think it 08:43:04
4 was Google, we lacked education data from several of 08:43:08
5 the defendants, and therefore, we decided to exclude 08:43:12
6 it. That's an example of -- of additional 08:43:15
7 information that would be needed in order to do an 08:43:17
8 individual by individual damage analysis, which by 08:43:22
9 the way, I was not instructed to do. 08:43:25

10 Q. Does your wage suppression regression 08:43:27
11 analysis allow you to figure out which individual 08:43:29
12 class members were not -- were not harmed and which 08:43:32
13 were the most category we went through earlier were 08:43:36
14 harmed? 08:43:40

15 A. That's a repeat of what I just said. If 08:43:41
16 you want to talk on an individual by individual 08:43:43
17 basis, you've got to set up this equation so that 08:43:45
18 you include almost all the reasons why people are 08:43:49
19 different. And the most obvious thing that is not 08:43:53
20 in there is the education variable. So had I been 08:43:58
21 asked to formulate an individual by individual 08:44:01
22 estimate, I would have -- I supposed would put a 08:44:04
23 subset of defendants for which I had the education 08:44:07
24 variable, and I don't know what I would do with the 08:44:11
25 rest. But that was not my task. 08:44:13

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1 records are linked through their Social Security 08:45:22
2 numbers. But for non-defendant hirees, we have no 08:45:25
3 idea where they came from. They might have been not 08:45:29
4 employed. They might have come from another firm. 08:45:32
5 The data sets that we have don't allow us to do 08:45:33
6 that. 08:45:38

7 Q. So you have no idea how many people Apple 08:45:38
8 hired from Microsoft or Oracle or IBM; is that your 08:45:41
9 testimony? 08:45:45

10 A. That's my understanding of the database 08:45:45
11 that we have. 08:45:47

12 Q. And did you ask for that data? 08:45:48

13 A. We asked for it, yeah. 08:45:49

14 Q. And why did you ask for it, was it 08:45:51
15 relevant? 08:45:53

16 A. Well, when you start out, you cast a wide 08:45:54
17 net, you're not sure exactly what you need, so you 08:45:56
18 want to have as much as possible about the career 08:45:59
19 paths for each and every employee who might have 08:46:02
20 been affected. 08:46:05

21 Q. And when you were told -- you were told it 08:46:05
22 was not available; is that your testimony? 08:46:07

23 A. That's correct. 08:46:10

24 Q. Did you get anything on that topic -- any 08:46:11
25 information about where the seven defendants were 08:46:13

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1 hiring people from? 08:46:17

2 A. I'm trying to think of the recruiting data. 08:46:21

3 I may have that information, but that is not 08:46:23

4 something that's been a focus of my energy. 08:46:27

5 Q. So could you answer the question, did you 08:46:34

6 get anything on that topic? 08:46:36

7 MR. GLACKIN: Objection, asked and 08:46:37

8 answered. 08:46:39

9 BY MR. PICKETT: 08:46:39

10 Q. It's just not been the focus, that really 08:46:39

11 doesn't answer whether you got anything on that? 08:46:43

12 MR. GLACKIN: You're misstating what his 08:46:46

13 answer was, Mr. Pickett. 08:46:47

14 THE WITNESS: I'm trying to tell you 08:46:49

15 that -- I'm unlike a computer, I don't remember 08:46:50

16 everything forever. 08:46:54

17 BY MR. PICKETT: 08:46:55

18 Q. What do you remember? Do you remember 08:46:55

19 getting anything? Do you remember you didn't get 08:46:57

20 what you asked for? Did you get anything? 08:46:58

21 MR. GLACKIN: Objection, asked and 08:47:01

22 answered. 08:47:01

23 THE WITNESS: What I'm trying to say is 08:47:01

24 that we had two databases. One was the payroll 08:47:03

25 records from the firm, the other ones were 08:47:06

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1 recruiting data. And I'm -- I'm very firm in the 08:47:14
2 opinion that the payroll record didn't include 08:47:17
3 previous employee, and certainly the data I 08:47:20
4 received -- the data analysis I carried out applied 08:47:22
5 to a data set that did not have previous employer, I 08:47:24
6 said employee, but previous employer for their 08:47:31
7 records, unless it was a defendant. 08:47:33

8 BY MR. PICKETT: 08:47:37

9 Q. Did Adobe produce former employee -- 08:47:37
10 employer data? 08:47:41

11 A. Well, I was not quite finished with my 08:47:43
12 answer. That's -- there's another data set, which 08:47:45
13 is a recruiting data set. And I have not examined 08:47:47
14 that carefully. I was asked -- I asked them if the 08:47:52
15 recruiting data set gave us useful information about 08:47:55
16 the intensity of cold calling, and Econ One's answer 08:47:59
17 was that it didn't -- wasn't going to be useful 08:48:04
18 because of complexities and difficulties with the 08:48:06
19 databases. 08:48:08

20 But now that I think about it, it's 08:48:09
21 possible that recruiting data might have made 08:48:11
22 reference to the sources of these hires that the -- 08:48:13
23 the non-defendant sources of the hirings. 08:48:19

24 Q. Did it, or didn't it? You say it's 08:48:22
25 possible? Anything is possible. 08:48:25

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1 The exact source of who they hired from doesn't have 08:49:13
2 any material impact on the analysis that I carried 08:49:17
3 out. 08:49:19

4 I know that they did not come from 08:49:20
5 defendants, but whether they came from some other -- 08:49:22
6 one of Microsoft or some other firm, it did not seem 08:49:24
7 material. 08:49:27

8 Q. Did all of these other companies who were 08:49:31
9 hiring -- well, let me ask you this -- let me turn 08:49:38
10 it the other way. 08:49:40

11 Have you looked at how many people hired 08:49:42
12 from the seven defendants who were outside the group 08:49:45
13 of seven defendants? 08:49:48

14 A. No. 08:49:52

15 Q. You haven't looked at that at all? 08:49:52

16 A. No, I don't have data on that. 08:49:56

17 Q. Were you aware that companies, like 08:49:56
18 Microsoft and Oracle and IBM and so on, that they 08:49:58
19 were, in fact, cold calling some employees at the 08:50:02
20 seven companies? 08:50:07

21 A. Well, I was aware, not because of the data 08:50:09
22 that I've been studying, but because of these 08:50:12
23 depositions and the documents haven't been produced. 08:50:14
24 It's pretty obvious that there was issues of 08:50:16
25 competition that go beyond the defendants. 08:50:20

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1 Q. So they were cold calling? 08:50:22

2 A. You're asking -- (Cross-talking.) 08:50:28

3 Q. So the non-defendants were cold calling -- 08:50:28

4 (Cross-talking.) 08:50:30

5 MR. GLACKIN: Excuse me, he was trying to 08:50:30

6 answer your question. Give him a minute -- a second 08:50:31

7 to answer your question. 08:50:34

8 THE WITNESS: So I have to say my 08:50:37

9 impression was yes. But if that were not the case, 08:50:38

10 I would not be entirely surprised. 08:50:40

11 BY MR. PICKETT: 08:50:43

12 Q. Why? 08:50:43

13 A. But the impression is yes. 08:50:44

14 Q. Why wouldn't you be surprised? 08:50:46

15 A. Specific non-defendants cold calling on 08:50:49

16 defendants? I don't know what they were -- I don't 08:50:51

17 know what these non -- who the non-defendants are, 08:50:55

18 who was doing the hiring, what kinds of employees 08:50:58

19 they were looking for. 08:51:01

20 Q. You don't know. So it would just be rank 08:51:02

21 speculation? 08:51:06

22 A. Well, that's an overstatement of the 08:51:08

23 ambiguity of my opinion. I have read documents in 08:51:11

24 the record and depositions that suggests that there 08:51:16

25 was, indeed, cold calling going on by the 08:51:20

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1 non-defendants. 08:51:23

2 In fact, the defendants could have -- were 08:51:24

3 allowed by these agreements to do cold calling 08:51:26

4 relative to the non-defendants. 08:51:31

5 Q. And within each other in many instances, 08:51:31

6 right? 08:51:35

7 A. You mean within each other, but not 08:51:35

8 violating their bilateral agreements. 08:51:39

9 Q. Right. Correct? 08:51:41

10 A. That's correct. 08:51:43

11 Q. And you don't have any data as to whether 08:51:44

12 the frequency of the cold calling increased or 08:51:46

13 decreased, do you? 08:51:49

14 A. Well -- (Cross-talking.) 08:51:49

15 MR. GLACKIN: Objection, vague, and asked 08:51:50

16 and answered. 08:51:51

17 THE WITNESS: We really wanted that, 08:51:52

18 obviously, because that could have been extremely 08:51:54

19 useful. But the defendants have not produced useful 08:51:56

20 data with regard to cold calling frequencies. 08:52:01

21 BY MR. PICKETT: 08:52:04

22 Q. And you don't know if a by -- bilateral 08:52:04

23 agreement there was no ability to cold call into a 08:52:06

24 particular company if the employer just cold called 08:52:09

25 somebody else? 08:52:12

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1 MR. GLACKIN: Objection, vague. 08:52:12

2 THE WITNESS: I said I don't have 08:52:16

3 information about the intensity of cold calling 08:52:17

4 either during their conspiracy period, before it or 08:52:20

5 after it. 08:52:24

6 BY MR. PICKETT: 08:52:25

7 Q. So you don't know whether the overall cold 08:52:25

8 calling within any of the labor markets -- one of 08:52:27

9 the defendants is involved, increased, decreased, or 08:52:32

10 stayed the same? 08:52:36

11 MR. GLACKIN: Objection, vague. 08:52:39

12 THE WITNESS: I indicated that we don't 08:52:40

13 have that cold calling information. We very much 08:52:41

14 wanted it, but we don't have it. 08:52:43

15 BY MR. PICKETT: 08:52:46

16 Q. Do you have any information that indicates 08:52:46

17 whether the level of hiring that consummated hiring, 08:52:46

18 as you put it, for any of the seven defendants 08:52:50

19 increased or decreased as a result of the alleged 08:52:53

20 bilateral agreements? 08:52:58

21 A. Well, I -- we have the hiring information, 08:53:01

22 but I made no attempt to estimate a model that you 08:53:04

23 would allow me to answer that question. That was 08:53:09

24 not my task. 08:53:11

25 Q. So as far as you know, the levels of hiring 08:53:13

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1 order to know who -- what might have been affected. 08:55:42

2 In that sense, you would have to have record of cold 08:55:46

3 calls not made, and we don't have that. 08:55:49

4 So what instead we did is -- well, not 08:55:52

5 instead, we -- having identified the potential of 08:55:54

6 differential impacts depending upon skill sets, and 08:56:01

7 the three frameworks says these guys are all tied 08:56:04

8 together through their internal equity 08:56:07

9 considerations. And this thing is spread across 08:56:10

10 everybody in the firm. So in a sense, the market is 08:56:14

11 collectively for everybody. 08:56:17

12 Q. So the regression -- your regression 08:56:18

13 analysis on wage suppression answers all of that, 08:56:19

14 all of those issues? 08:56:23

15 A. It speaks to all those issues, yeah. 08:56:25

16 Q. And your regression -- wage suppression 08:56:27

17 regression analysis can answer on the question 08:56:30

18 whether a sous chef at Intel's wages were suppressed 08:56:33

19 during the class period? 08:56:37

20 A. No, they're not. I've already told you 08:56:38

21 that. It's intended to estimate the conversation 08:56:40

22 suppression by defendant, by year. And carrying 08:56:44

23 that out, I used as much individual information as I 08:56:49

24 had really, which is the age and -- but the model is 08:56:53

25 not intended to give you an estimate of how the 08:56:59

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1 damages varied with age, but instead to control for 08:57:01
2 any composition differences between the firms so 08:57:05
3 that you get as accurate as possible an estimate of 08:57:08
4 the firm by firm effect year by year. 08:57:11

5 Q. But if you look at individual class 08:57:14
6 members, like this sous chef, your regression 08:57:15
7 analysis cannot tell whether there was any 08:57:17
8 suppression of wages for that individual, correct? 08:57:23

9 MR. GLACKIN: Objection. 08:57:25

10 THE WITNESS: That's correct. That was not 08:57:26
11 part of the task that I was assigned. 08:57:27

12 BY MR. PICKETT: 08:57:37

13 Q. In a competitive market, what does it imply 08:57:37
14 about two products or services if one is able to 08:57:41
15 command double of the price? 08:57:44

16 A. Now, are you talking about facts now or 08:57:46
17 theory? 08:57:48

18 Q. Theory. 08:57:48

19 A. From a conceptual framework, so can you be 08:57:48
20 clear to me what the -- what the -- what do you mean 08:57:52
21 by a competitive model, you mean a simple supply and 08:57:55
22 demand model? 08:57:58

23 Q. Sure. 08:58:00

24 A. So can you repeat your question again? 08:58:00

25 Q. In a competitive market, what does it imply 08:58:01

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1 that the key rivals of the seven defendants were 09:00:44
2 only the other six defendants? 09:00:47
3 A. No, it's not. 09:00:48
4 Q. So was it your testimony the key rivals 09:00:50
5 weren't poaching defendants' employees during the 09:00:52
6 class period? 09:00:54
7 A. No, that is not my testimony. 09:00:56
8 Q. Because you know they were, correct? 09:00:59
9 A. Well, this is a reference to the poaching 09:01:04
10 that was not done, not a reference to the poaching 09:01:06
11 that was done. 09:01:10
12 Q. But I'm asking you about the poaching that 09:01:10
13 was done. You know that lots and lots and lots of 09:01:12
14 non-defendants were poaching from these seven 09:01:16
15 defendants, correct -- 09:01:19
16 MR. GLACKIN: Objection, vague. 09:01:20
17 BY MR. PICKETT: 09:01:21
18 Q. -- during the class period? 09:01:21
19 MR. GLACKIN: Sorry, I did not mean to 09:01:23
20 interrupt you. 09:01:26
21 THE WITNESS: That's correct. 09:01:26
22 BY MR. PICKETT: 09:01:27

■ ■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ ■ [REDACTED] [REDACTED]

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1 Q. You were wrong, weren't you? 09:35:38

2 A. I misspoke. 09:35:38

3 Q. So let me ask you to look at the data you 09:35:39

4 do have that you cited in your own report. And, 09:35:41

5 once again, the number of talent acquired and talent 09:35:43

6 lost, the vast majority comes from nondefendants, 09:35:47

7 correct? 09:35:51

8 MR. GLACKIN: Objection, vague. 09:35:55

9 THE WITNESS: The majority definitely 09:35:57

10 does. 09:35:59

11 BY MR. PICKETT: 09:36:01

12 Q. And there was information flow and price 09:36:01

13 discovery resulting from all of those hires and 09:36:04

14 losses, correct? 09:36:08

15 A. That's correct. 09:36:09

16 Q. And all of the cold calls that might have 09:36:09

17 been associated with those, correct? 09:36:12

18 A. That's correct. 09:36:14

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 MR. GLACKIN: Objection, foundation. 09:36:25

23 THE WITNESS: You made a reference to the 09:36:27

24 firms, that there was information flowing between 09:36:29

25 the firms. 09:36:31

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1 BY MR. PICKETT: 09:36:32

2 Q. Between the employees -- between the 09:36:32

3 employees and potential employees? 09:36:34

4 A. Well, I'm only making a point that the 09:36:36

5 amount of information flow was suppressed. I'm not 09:36:39

6 saying there was no information flow. 09:36:42

█ █ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED]

█ █ [REDACTED] [REDACTED]

█ [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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█ [REDACTED] [REDACTED]

24 Q. Your regression analysis? 09:37:32

25 A. The regression, yeah. 09:37:33

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1 up of some groups, like software engineers, but you 09:41:53
2 can still be rated because there are key software 09:41:58
3 engineers who are superior and they deserve a whole 09:42:00
4 lot more than average. 09:42:03

5 Q. And the individual can be paid higher or 09:42:04
6 lower, depending on a lot of individual factors, 09:42:06
7 true? 09:42:09

8 A. Within the firm, that -- that would be the 09:42:09
9 case, that there would be some consideration of 09:42:10
10 performance, that's correct. 09:42:13

11 Q. And -- and other factors, I assume? 09:42:15

12 A. Other than performance? 09:42:17

13 Q. Yes. Skill set -- 09:42:17

14 A. Well, I -- 09:42:23

15 Q. -- experience? 09:42:23

16 A. I take performance to -- 09:42:26

17 Q. Encompass everything? 09:42:28

18 A. -- encompass everything. 09:42:31

19 Q. Fair enough. The purpose of benchmarking 09:42:31
20 is to make sure that compensation is competitive, 09:42:32
21 correct? 09:42:36

22 MR. GLACKIN: Objection, vague. 09:42:36

23 THE WITNESS: It's to -- it's to have a 09:42:37
24 salary -- internal salary structure that -- that 09:42:42
25 reduces the risk of losing valuable employees -- 09:42:45

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1 Q. Well -- 09:42:50

2 A. -- if that's what you mean by 09:42:50

3 "competitive," I will agree. 09:42:52

4 Q. You look to your talent competitors to see 09:42:54

5 what they're paying and you want to make sure your 09:42:56

6 compensation relative to them is competitive, 09:42:58

7 correct? 09:43:00

8 A. Yeah, actually, only to the extent that 09:43:02

9 there's a competitive force. You don't want to 09:43:04

10 match some high salary. Some firm that has -- 09:43:07

11 offers high salary, if you are not feeling a 09:43:09

12 competitive force from them. 09:43:14

13 Q. Let me ask you to focus on what we'll call 09:43:16

14 the "but for world," and that's a world in which the 09:43:19

15 alleged bilateral agreements did not exist during 09:43:23

16 the class period. You understand the concept? 09:43:26

17 A. I do. 09:43:29

18 Q. All right. In the "but for world," would 09:43:32

19 there have been more cold calling over all? 09:43:34

20 A. I -- I don't have any evidence or data that 09:43:43

21 would support that conclusion, so -- 09:43:46

22 Q. So, go ahead. 09:43:51

23 A. Well, I'll leave it at what I said. 09:43:54

24 Q. So the cold calling would have been 09:43:57

25 redistributed in a "but for world"? 09:43:59

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1 MR. GLACKIN: Objection, 09:44:03

2 mischaracterizes. 09:44:03

3 BY MR. PICKETT: 09:44:04

4 Q. The total amount wouldn't change, but it 09:44:04

5 might go to different people? 09:44:05

6 A. I didn't say that. I recognize that that 09:44:07

7 was what was embedded in your question. 09:44:09

8 Q. So -- 09:44:11

9 A. But there's no evidence to support that. 09:44:12

10 Q. So you don't know one way or another 09:44:15

11 whether the level of cold calling would have been 09:44:17

12 the same and redistributed, whether it would have 09:44:19

13 gone up, whether it would have gone down, in the 09:44:23

14 "but for world"? 09:44:26

15 A. Well, yeah, absolutely. You would need to 09:44:28

16 carry out an econometric exercise to answer that 09:44:30

17 question, and we don't have the data that allows us 09:44:33

18 to do it. 09:44:37

19 Q. So you don't know? 09:44:38

20 A. I answered that question already. I said, 09:44:41

21 we don't have the data that allows us to 09:44:45

22 determine -- to estimate in the "but for world" how 09:44:47

23 much cold calling would occur. 09:44:50

24 Q. In the "but for world," would there have 09:44:52

25 been -- would there have been an increase in 09:44:55

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HIGHLY CONFIDENTIAL

1 THE WITNESS: Well, the data analysis I 09:46:48
2 carried out, of course, has to target compensation, 09:46:50
3 so I'm asking what would have happened in a "but for 09:46:54
4 world" regarding compensation determination. And 09:46:56
5 I've controlled for a bunch of other variables in 09:46:58
6 this equation, and -- but I've made no attempt to 09:47:01
7 determine the impact of cold calling on anything, 09:47:05
8 except for the compensation. 09:47:06
9 BY MR. PICKETT: 09:47:10
10 Q. Would the total number of hires by each of 09:47:10
11 the defendants in the class period been the same in 09:47:13
12 the "but for world"? 09:47:15
13 MR. GLACKIN: Objection, vague. 09:47:19
14 THE WITNESS: That isn't something that 09:47:27
15 I've explored. 09:47:29
16 BY MR. PICKETT: 09:47:30
17 Q. So you don't know, correct? 09:47:30
18 A. That's correct. 09:47:31
19 Q. All right. Let me use an example. Adobe 09:47:32
20 and Apple had an agreement which under Figure 1 09:47:37
21 started May 2005. And I want to walk through what 09:47:42
22 you believe would have happened in the "but for 09:47:51
23 world" absent that agreement, all right? 09:47:54
24 A. Okay. 09:47:58
25 Q. So presumably this would -- process would 09:47:59

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1 start when an employee at Adobe would have gotten a 09:48:03
2 cold call she otherwise would not have received, 09:48:06
3 right? 09:48:09
4 A. That's correct. 09:48:09
5 Q. And you would agree that only some Adobe 09:48:10
6 employees would get a cold call from Apple in the 09:48:13
7 "but for world"? 09:48:16
8 A. That's correct. 09:48:18
9 Q. And then the particular Adobe employee 09:48:18
10 would have to decide to accept the cold call, 09:48:20
11 correct? 09:48:22
12 MR. GLACKIN: Objection, assumes facts, 09:48:22
13 vague. 09:48:24
14 THE WITNESS: I don't know what you mean by 09:48:26
15 "accept the cold call." (Cross-talking.) 09:48:28
16 MR. PICKETT: Well, I get -- 09:48:29
17 (Cross-talking.) Phone or e-mail, but I get cold 09:48:30
18 calls all the time. They say, "I'm here to talk 09:48:32
19 about" -- and I say, "Thank you," and hang up. So 09:48:36
20 some people don't engage in cold calls. 09:48:39
21 THE WITNESS: So by "accept" you mean 09:48:41
22 engage? 09:48:43
23 MR. PICKETT: Yes. 09:48:43
24 THE WITNESS: Okay. Yes, not all would 09:48:44
25 engage in response to a cold call. 09:48:45

--	--	--	--

09:50:27

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1 this water cooler talk about, "Oh, I had this offer 10:20:35
2 from Apple. And, boy, did I get a great new package 10:20:38
3 with this big increase in my stock options." That 10:20:44
4 kind of stuff is going to go on at the water -- at 10:20:47
5 the water cooler and it's going to be a response to 10:20:48
6 other employees. 10:20:49

7 Q. Is it your view that in the "but for 10:20:51
8 world," an increase in compensation to a single 10:20:54
9 employee would trigger a higher level of 10:20:57
10 compensation for all employees? 10:21:02

11 A. It could. I wouldn't say "would." It 10:21:03
12 could. It depends upon the -- how much information 10:21:06
13 is revealed by that possibility. 10:21:10

14 Q. And what level of compensation increase 10:21:11
15 would this single employee need to obtain, in order 10:21:14
16 for it to impact the level of compensation for all 10:21:17
17 employees? 10:21:20

18 A. I don't have a specific number in mind. 10:21:22

19 Q. How could a single employee's higher 10:21:25
20 compensation result in an across-the-board change in 10:21:28
21 compensation? 10:21:31

22 A. Maybe I should reveal that I have a little 10:21:33
23 expertise in this because I was the chairman of the 10:21:35
24 economics department at UCLA for a five-year period 10:21:37
25 in the 1980s. 10:21:42

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1 Q. That's a legitimate assumption, right? 10:57:08

2 A. That's a -- it's a possibility. 10:57:11

3 Q. And what does it tell you about the damages 10:57:17

4 to that Microsoft employee who is now in the 10:57:19

5 class? 10:57:21

6 A. Like I said before, I understand what 10:57:33

7 you're asking me, but I can't offer a off-the-cuff 10:57:34

8 explanation without thinking through it clearly. 10:57:41

9 Q. As you sit here right now, can you think of 10:57:44

10 any way in which that Microsoft employee is not 10:57:48

11 benefited by getting the new job? 10:57:51

12 MR. GLACKIN: Objection, vague, incomplete 10:57:53

13 hypothetical. 10:57:55

14 THE WITNESS: Well, the suppression of 10:57:56

15 information about the job opportunities is going to 10:57:59

16 be suppressing conversation, not just of the 10:58:03

17 defendants, but elsewhere as well. 10:58:05

18 BY MR. PICKETT: 10:58:08

19 Q. So her Microsoft salary was suppressed? 10:58:08

20 A. It's possible. You've asked me in this 10:58:11

21 hypothetical way in which we could interpret 10:58:14

22 this would lead to -- 10:58:19

23 Q. How does it work -- (Cross-talking.) 10:58:22

24 MR. GLACKIN: Are you finished? 10:58:24

25 THE WITNESS: You asked me whether I can 10:58:24

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1 concoct the story of mine in which this hypothetical 10:58:26
2 individual was actually harmed by the -- by the 10:58:27
3 conspiracy, and I'm not -- even though I probably 10:58:27
4 shouldn't, and I gave you an example. 10:58:32
5 BY MR. PICKETT: 10:58:37
6 Q. How would it work that her Microsoft salary 10:58:38
7 would have been impacted? 10:58:42
8 MR. GLACKIN: Objection, incomplete 10:58:47
9 hypothetical, calls for speculation, foundation. 10:58:49
10 THE WITNESS: Well, if we thought of there 10:58:52
11 being a specific skill category, and suppose there's 10:58:54
12 an increase in demand for this skill category, so 10:58:58
13 the new equilibrium price is going to be a higher 10:59:03
14 price. 10:59:08
15 This sequence of transactions in search of 10:59:08
16 that equilibrium and those transactions are 10:59:13
17 occurring among the defendants, but they are 10:59:13
18 occurring with the non-defendants as well. So those 10:59:15
19 Microsoft employees are also being impaired by the 10:59:17
20 information -- by the limited information flow. 10:59:22
21 BY MR. PICKETT: 10:59:25
22 Q. Isn't it the case that the Microsoft 10:59:25
23 employees would be getting more cold calls because 10:59:27
24 of the restrictions on cold calling within the 10:59:30
25 bilateral agreement? 10:59:34

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1 class" was provided by counsel. 11:18:51

2 BY MR. PICKETT: 11:18:54

3 Q. Well, the definition of it was also 11:18:54

4 provided. "All natural persons employed on a salary 11:18:57

5 basis who work in the creative, research & 11:19:02

6 development, and/or technical fields"? 11:19:05

7 MR. GLACKIN: So just -- you're reading a 11:19:07

8 different page than the page you directed him to. 11:19:08

9 MR. PICKETT: No, I'm -- actually, it's 11:19:12

10 right there. 11:19:12

11 MR. GLACKIN: Okay. 11:19:15

12 THE WITNESS: On page 74? 11:19:15

13 BY MR. PICKETT: 11:19:16

14 Q. Yes. 11:19:16

15 A. It says, "I was asked to identify employees 11:19:16

16 that fit with in Technical Employee Class." 11:19:19

17 Q. "Defined to include all full-time salaried 11:19:21

18 employees of Defendants during the period of the 11:19:21

19 alleged agreements that worked in technical, 11:19:21

20 creative, and research & development positions." 11:19:28

21 A. Correct. 11:19:30

22 Q. You were provided that definition by the 11:19:32

23 plaintiff's counsel? 11:19:34

24 A. Correct. 11:19:34

25 Q. It took a long time to get there. 11:19:35

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1 MR. GLACKIN: Objection, I'm going to 11:20:35
2 instruct him not to answer to the extent it goes to 11:20:36
3 draft or preliminary work or communications with 11:20:39
4 counsel. But if you can answer without talking 11:20:42
5 about those things, fine. 11:20:44

6 THE WITNESS: This thing was a process, so 11:20:47
7 it wouldn't surprise me if that was the case, but we 11:20:51
8 don't take special note about it. We looked at 11:20:54
9 volumes of -- should we include marketing? We asked 11:20:58
10 that question. That's as if to say they are 11:21:00
11 included. And then the decision was to say, no, 11:21:03
12 let's not include marketing, that's not what we -- 11:21:05
13 (Inaudible mumbling.) 11:21:08

14 BY MR. PICKETT: 11:21:08

15 Q. Now -- (Cross-talking.) 11:21:08

16 A. In that sense, everyone that is not in the 11:21:08
17 technical class was, in a sense, explicitly removed 11:21:10
18 from the technical class. 11:21:15

19 Q. Were the six bilateral agreements that you 11:21:17
20 identify in figure 1, page 9, if you want to look at 11:21:25
21 it, but we looked at this before -- were the -- was 11:21:29
22 the scope of agreements limited to persons who 11:21:34
23 worked in technical, creative, and research & 11:21:39
24 development positions? 11:21:42

25 A. Decidedly not. 11:21:44

HIGHLY CONFIDENTIAL

1 Q. So is there any basis on the fact to limit 11:21:45
2 this class to this definition? 11:21:47

3 MR. GLACKIN: Objection, vague and 11:21:51
4 ambiguous, calls for a legal conclusion, calls for 11:21:52
5 speculation. 11:21:54

6 THE WITNESS: Are you asking me as an 11:21:58
7 economist -- 11:22:01

8 BY MR. PICKETT: 11:22:02

9 Q. Yes. 11:22:02

10 A. -- if I can think up reasons? 11:22:02

11 Q. Sure. 11:22:05

12 A. Well, you want a class that is being 11:22:06
13 effected by the agreements. You want to make sure 11:22:07
14 that all or most members of the class are affected. 11:22:11
15 So you might hypothesize that the technical or 11:22:14
16 smaller group than the whole set of employees might 11:22:19
17 be an appropriate class. 11:22:21

18 Q. Why? 11:22:23

19 A. Because you might hypothesize that those 11:22:24
20 are the ones that are most susceptible to the cold 11:22:26
21 calling. 11:22:32

22 Q. Well, did you find that to be true in 11:22:33
23 fact? 11:22:36

24 A. Well, let me put it this way, I have not 11:22:36
25 found any evidence that would suggest this sharing 11:22:37

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1 of rewards is limited to a technical class. So if 11:22:40
2 you ask me, what we ought to be using is the 11:22:47
3 whole -- the whole salary database. 11:22:49

4 But I wasn't asked to explore that, so I 11:22:52
5 just sort of kind of have a casual opinion about it, 11:22:56
6 but not a well-thought out opinion. 11:22:58

7 Q. You spent hundreds of hours on this 11:23:01
8 project, right? 11:23:04

9 A. But not on this question. 11:23:05

10 Q. But have you seen anything that would 11:23:06
11 suggest it's appropriately limited? 11:23:07

12 A. I have not seen anything to suggest that 11:23:10
13 the broader class is inappropriate, but I wasn't 11:23:12
14 asked to explore that. But in the course of 11:23:14
15 carrying out the task that I carried out, nothing 11:23:17
16 popped out as suggesting that the broader class was 11:23:21
17 inappropriate. 11:23:24

18 Q. Or suggest that a narrower class is more 11:23:26
19 appropriate? 11:23:33

20 A. I take that to be the same statement. 11:23:33

21 Q. Let me ask you to look at figure 1 on page 11:23:36
22 9. These are the six key bilateral agreements on 11:23:39
23 which you base your study? 11:23:51

24 A. That's correct. 11:23:58

25 Q. You agree that there's no agreement to 11:23:58

HIGHLY CONFIDENTIAL

1 Q. Look at the bottom of the page of the text. 12:12:39
2 It says, "Each defendant had a rigid salary 12:12:45
3 structure," correct? 12:12:47
4 A. It says that, but the first sentence says 12:12:50
5 "somewhat rigid salary structure." 12:12:53
6 Q. So what's your opinion? 12:12:54
7 A. Well, I think if -- if "rigid," you mean 12:12:56
8 absolutely rigid, no. 12:12:59
9 Q. What -- well, one time you said "somewhat 12:13:02
10 rigid," in the same very paragraph you said "rigid." 12:13:05
11 A. I suggest it's somewhat -- 12:13:10
12 Q. Which did -- 12:13:10
13 MR. GLACKIN: Why don't you -- why don't 12:13:10
14 you let him finish his question. 12:13:10
15 BY MR. PICKETT: 12:13:13
16 Q. Which did you mean? 12:13:13
17 A. I mean somewhat rigid. 12:13:14
18 Q. Okay. And by that -- so I should insert 12:13:17
19 the word "somewhat" at the bottom of that page? 12:13:20
20 MR. GLACKIN: Objection, argumentative, 12:13:24
21 asked and answered. 12:13:25
22 THE WITNESS: That would be helpful. 12:13:27
23 BY MR. PICKETT: 12:13:31
24 Q. Okay. And when you state now that "Each 12:13:31
25 defendant had a somewhat rigid salary structure," 12:13:33

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1 MR. GLACKIN: Objection, 12:19:07

2 mischaracterizes. 12:19:08

3 THE WITNESS: I didn't perform a 12:19:10

4 statistical test, but it's sort of embodied in our 12:19:13

5 comparison at Figure 11 versus Figure 12. 12:19:15

6 BY MR. PICKETT: 12:19:20

7 Q. How? 12:19:20

8 A. Well, the Figure 12 is a reference to a 12:19:21

9 completely disaggregated examination of data on a 12:19:26

10 defendant-by-defendant basis. And the test would be 12:19:30

11 to compare the R squares that are reported on Figure 12:19:34

12 12 with the R squares that are reported in Figure 12:19:37

13 11. 12:19:42

14 Q. And what did -- did you do that? 12:19:43

15 A. No, I didn't carry it out. I said it's 12:19:44

16 embodied in those -- in those differences. 12:19:46

17 Q. How much of the R squared is carried by 12:19:49

18 age, gender, and tenure? 12:19:54

19 A. I don't know off the top of my head. It 12:19:58

20 wouldn't surprise me that the title indicators are 12:19:59

21 very important here, by the way. And probably more 12:20:04

22 important than employer indicators. 12:20:07

23 Q. Would it surprise you that the title 12:20:09

24 indicators govern the vast majority? 12:20:09

25 A. No, that wouldn't surprise me. 12:20:09

HIGHLY CONFIDENTIAL

1 Q. Ask you to turn to page -- paragraph 64, 12:20:28
2 which is page 29. Well, the part of it I'd like to 12:20:33
3 point you to is on page 29. 12:20:44

4 So in that paragraph you're talking about 12:20:48
5 common proof and "B" states, "Additional evidence 12:20:55
6 that compensation of employees tended to move 12:20:57
7 together over time, such as the effects of 12:21:00
8 noncompete agreements are likely to be broadly 12:21:05
9 felt." Do you see that? 12:21:07

10 A. I do see that. 12:21:08

11 Q. So you felt the need to test whether the 12:21:11
12 compensation of employees tended to move together 12:21:14
13 over time, right? 12:21:18

14 A. Within firms, by the way. 12:21:21

15 Q. You mean on an individual 12:21:25
16 defendant-by-defendant basis? 12:21:27

17 A. Correct. 12:21:29

18 Q. Only that? 12:21:31

19 A. The sharing's about internal equity, it's 12:21:33
20 not about cross-firm consideration. So it's really 12:21:35
21 about what's happening inside the firms. 12:21:39

22 Q. So only that, correct? Only within a 12:21:43
23 single entity? 12:21:53

24 A. Correct. That's a reference. It doesn't 12:21:55
25 mean that there isn't coordination of salary 12:21:57

HIGHLY CONFIDENTIAL

1 percent in each year, must compensation move 12:33:59
2 together across groups? 12:34:02
3 A. Well, to the extent that's the same 12:34:05
4 coefficients on a year-by-year basis, the answer is 12:34:07
5 yes. 12:34:10
6 Q. Now, do the regressions look at changes in 12:34:13
7 compensation over time? 12:34:17
8 A. No, they do not. 12:34:21
9 Q. You ran the regressions separately year by 12:34:23
10 year, right? 12:34:26
11 A. That's correct. 12:34:26
12 Q. And you didn't attempt to correlate years, 12:34:27
13 correct? 12:34:33
14 A. What's being reported here doesn't make a 12:34:33
15 reference to intertemporal comparisons. 12:34:35
16 Q. And -- and you didn't attempt to correlate 12:34:40
17 between different job titles, did you? 12:34:42
18 MR. GLACKIN: Objection, vague. 12:34:50
19 THE WITNESS: I don't know what you mean by 12:34:58
20 "correlate between different job titles." 12:35:00
21 BY MR. PICKETT: 12:35:03
22 Q. You didn't put in data job title by job 12:35:03
23 title? 12:35:07
24 A. Well, there are title indicators in here, 12:35:07
25 you don't mean that. So what is it that you -- 12:35:09

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1 Q. Compensation on a job-title-by-job-title 12:52:34
2 basis. 12:52:36

3 A. And so the additional stuff that we haven't 12:52:38
4 discussed here is to look at the -- the compensation 12:52:41
5 title over time. 'Cause you're quite right, if 12:52:44
6 there were major changes in those title 12:52:50
7 compensation, then these equations are going to 12:52:51
8 disguise -- they're going to look like there isn't 12:52:56
9 change, when there is big change. You got me that? 12:52:59

10 Q. Yes. 12:53:02

11 A. So you've got to worry about the 12:53:03
12 variability in those coefficients, and you've got 12:53:03
13 the sequence of data displays that -- that show you 12:53:07
14 the Figure 15, Figure 16. 12:53:13

15 Q. I'll get to those right after lunch, but -- 12:53:20

16 A. Okay. 12:53:22

17 Q. -- let's stay on the regression analysis. 12:53:22

18 A. So you were asking me about title, so these 12:53:25
19 are the -- this is what we did with regard to 12:53:27
20 variability and titles. 12:53:29

21 Q. Okay. But the regression analyses 12:53:31
22 reflected in Figures 11, 12, 13, and 14, don't tell 12:53:32
23 you whether salaries of two employees with two 12:53:39
24 different job titles are correlated with each other 12:53:41
25 over time, correct? 12:53:45

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1 A. That's correct. And that's why we did 12:53:46
2 Figure 15 and 16. 12:53:47

3 MR. PICKETT: Okay. Why don't we take a 12:53:49
4 break on that note? 12:53:50

5 THE VIDEOGRAPHER: We are off the record. 12:53:52
6 The time is 12:54. 12:53:53

7 (Lunch recess taken.) 12:53:54

8 THE VIDEOGRAPHER: This is Disk 5 for 12:53:54
9 Edward Leamer. We're back on the record at 1:36. 13:36:50

10 THE WITNESS: I'm putting them there, so. 13:36:53

11 MR. GLACKIN: Same -- if you can turn to 13:36:55
12 Figure 12. 13:37:00

13 THE WITNESS: Okay. 13:37:02

14 BY MR. PICKETT: 13:37:11

15 So let me go back to the wage suppression 13:37:11
16 regressions for just a moment. I want you to take a 13:37:14
17 look, please, at Figure 12 on page 56, which has the 13:37:19
18 R squares year by year for the seven defendants. 13:37:23
19 And I think you'll agree that these show the levels 13:37:29
20 of compensation at each year, but they don't show 13:37:31
21 the changes of compensation over time, right? 13:37:36

22 A. That's correct. 13:37:38

23 Q. Did you look at what the R squares will be, 13:37:39
24 if you used data showing changes in compensation 13:37:44
25 over the years? 13:37:47

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1 shown for total compensation was, to use your word, 14:13:24
2 a "mish-mash," how would that affect your opinion? 14:13:27

3 A. It would mean that these regressions 14:13:31
4 wouldn't -- wouldn't speak to the point. It doesn't 14:13:33
5 alter the fact that there is wage sharing, because 14:13:36
6 there's ample documentary evidence and there's ample 14:13:40
7 conceptual theory to support the idea that some form 14:13:45
8 of wage sharing is going on, but that it somehow was 14:13:47
9 being disguised and not -- not evident in these 14:13:47
10 particular diagrams. Although, if I found that, you 14:13:47
11 can be sure I'd be thinking of other ways of 14:13:59
12 creating displays that would reveal the wage sharing 14:14:01
13 that was actually going on, even though these might 14:14:04
14 not. 14:14:05

15 Q. How much time did it take you to look at 14:14:06
16 the total compensation chart under Figure 16 and 14:14:08
17 conclude that these lines were very substantially 14:14:15
18 parallel? 14:14:17

19 A. I'm -- I'm attempted to be playful, but 14:14:19
20 I've been told not to. When Picasso was asked how 14:14:21
21 long it took him to draw his most recent painting, 14:14:25
22 he said all his life. Which to some extent is what 14:14:28
23 seems to me to be applicable. Not just take a look 14:14:31
24 at it, it's the whole experience that I've built up 14:14:34
25 in studying data sets and drawing conclusions from 14:14:37

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1 MR. PICKETT: -- among job titles? 14:26:59

2 MR. GLACKIN: Objection, 14:27:01

3 mischaracterizes. 14:27:01

4 THE WITNESS: I didn't understand that. 14:27:02

5 BY MR. PICKETT: 14:27:04

6 Q. Is there a difference to internal equity -- 14:27:04

7 A. Yes. 14:27:07

8 Q. -- that would result in differences in 14:27:07

9 payment of compensation across job titles? 14:27:09

10 MR. GLACKIN: Objection, incomplete. 14:27:12

11 THE WITNESS: You mean in a given year 14:27:17

12 there are differences in -- 14:27:18

13 BY MR. PICKETT: 14:27:19

14 Q. Over time, as you've graphed them on your 14:27:19

15 own charts. 14:27:22

16 A. Yeah, they -- they -- the -- the nonrigid 14:27:24

17 compensation would be evidenced by, say -- let's 14:27:26

18 say, a big bump up in base salary or total 14:27:31

19 compensation for a particular job title that left 14:27:35

20 that particular job title in a new position 14:27:38

21 indefinitely, that didn't get corrected by -- by 14:27:40

22 internal realignments of compensation. 14:27:46

23 Q. Could a nonrigid wage structure, as you've 14:27:48

24 defined it, lead to parallel lines? 14:27:50

25 A. Yes, it could. 14:27:52

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1 internal equity is -- is an important consideration 14:55:28
2 in the compensation setting, it's sufficiently clear 14:55:32
3 and well understood that there are very few firms 14:55:35
4 who can ignore that completely. 14:55:39

5 Q. Did you see any evidence that any of the 14:55:41
6 seven did? 14:55:42

7 A. Ignored internal equity? No, I didn't see 14:55:44
8 any evidence that internal equity was ignored. 14:55:46

9 Q. And -- 14:55:47

10 A. A case in point, again, poster -- poster 14:55:47
11 child is that Google across the board 14:55:51
12 compensation. 14:55:56

13 Q. Does internal equity extend beyond 14:55:56
14 individual job titles? 14:56:00

15 MR. GLACKIN: Objection, vague. 14:56:02

16 THE WITNESS: Well, this is the reaction on 14:56:03
17 a part of the work force. So if you -- suppose 14:56:05
18 you're in a job title and somebody comes in with a 14:56:06
19 super high compensation. The question is, is that a 14:56:11
20 violation of internal equity. That's a judgment on 14:56:13
21 the part of the worker there. It may be that this 14:56:16
22 person that's been hired is so productive, and so 14:56:18
23 creative, and we're all going to benefit from the 14:56:21
24 fact that that worker is there, then there isn't any 14:56:23
25 qu -- internal equity problem. 14:56:25

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1 MR. PICKETT: I want answers to all my 16:36:43
2 questions. You're the one instructing. 16:36:45
3 MR. GLACKIN: I'm understanding you to say 16:36:49
4 that you think that that answer is not useful to you 16:36:51
5 unless you can ask follow-up questions that -- 16:36:53
6 (Cross-talking.) 16:36:55
7 MR. PICKETT: That's not what I said at 16:36:55
8 all. That's not what I said at all. 16:36:56
9 Q. Go ahead, answer your question. Please go 16:36:56
10 ahead. 16:36:59
11 A. You want an example -- (Cross-talking.) 16:36:59
12 Q. I want all dimensions. 16:37:01
13 A. I can't report all because I don't have all 16:37:03
14 of them in front of me. 16:37:05
15 Q. All that you recall. 16:37:06
16 A. Well, I recall one which has to do with 16:37:07
17 disaggregation with data by a defendant. So I have 16:37:14
18 a model that has all the defendants -- 16:37:17
19 MR. GLACKIN: Wail, wait, wait, wait, I'm 16:37:19
20 going to instruct you not to answer further. 16:37:22
21 THE WITNESS: Okay. 16:37:25
22 BY MR. PICKETT: 16:37:31
23 Q. What were the results of the 16:37:31
24 disaggregation? 16:37:32
25 MR. GLACKIN: If you answer something other 16:37:36

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1 Q. The individual's -- 17:30:52

2 A. -- depends on the number of new hires. But 17:30:53

3 it's a very -- it's a model that describes an 17:30:56

4 individual, not the firm. So you'd have to carry 17:30:59

5 out this exercise -- if you're interested in Adobe, 17:31:02

6 you'd have to carry out the exercise with regard to 17:31:03

7 all employees at Adobe, allowing for the different 17:31:05

8 ages, and tenure, and etc. 17:31:08

9 Q. To -- to find individual impact? 17:31:11

10 A. I -- I think that that's a 17:31:14

11 misinterpretation. It's rather -- you aggregate 17:31:15

12 that then to the level of the firm by summing up 17:31:18

13 over all Adobe employees, and that estimate is an 17:31:22

14 estimate that is corrected for the age competition 17:31:25

15 of an employee of the Adobe workforce. 17:31:28

16 Q. And the only two variables within a company 17:31:30

17 that make a difference are age and number of new 17:31:33

18 hires? 17:31:38

19 A. Correct. Those are the only two that drive 17:31:38

20 the conduct variable. 17:31:45

21 Q. Now, this is an aggregated regression, 17:31:48

22 correct? Not disaggregated by company? 17:31:50

23 A. Well, this is individual data. 17:31:55

24 Q. The analysis is not disaggregated, it's 17:31:57

25 aggregated, correct? 17:31:58

HIGHLY CONFIDENTIAL

1 MR. GLACKIN: Objection, vague, 17:32:01
2 mischaracterizes. 17:32:02
3 THE WITNESS: Well, the data from all firms 17:32:03
4 are included in the estimation process. 17:32:06
5 BY MR. PICKETT: 17:32:08
6 Q. All right. Let me go back. You did run a 17:32:08
7 disaggregation analysis, correct? 17:32:09
8 A. Yeah, that's what I just said. I mean, 17:32:13
9 maybe I ought to repeat what I said, which is this 17:32:15
10 regression is not disaggregated, in the sense that 17:32:17
11 includes observation from all firms. 17:32:22
12 Q. Correct. 17:32:26
13 A. Although, it does have variables that 17:32:26
14 describe differences among the firms. 17:32:29
15 Q. It describes data from all firms, 17:32:31
16 correct? 17:32:34
17 A. It uses the input data from all firms. 17:32:34
18 Q. So it is not disaggregated firm by firm by 17:32:37
19 firm? 17:32:39
20 A. If you use the word "disaggregation" to 17:32:40
21 refer to estimating the same equation on subsets of 17:32:45
22 the data on a firm-by-firm basis, that's not what 17:32:47
23 this is. 17:32:49
24 Q. And the result you get is aggregated, 17:32:52
25 true? 17:32:57

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1 MR. GLACKIN: Objection, mischaracterizes. 17:34:17

2 THE WITNESS: Well, I'm tired here. The 17:34:56

3 answer is that's what the model says, but then 17:35:00

4 you're raising another question, which is, is the 17:35:03

5 model compatible with the -- the set of 17:35:05

6 opportunities. 17:35:08

7 MR. PICKETT: Right. 17:35:10

8 THE WITNESS: And in my tired state, I 17:35:11

9 can't produce a story that would justify that. 17:35:17

10 BY MR. PICKETT: 17:35:21

11 Q. Why does compensation depend on the number 17:35:21

12 of new hires at all defendants? Why wouldn't it 17:35:23

13 depend on the number of new hires total, including 17:35:27

14 the nondefendants? 17:35:30

15 A. Where -- are you talking about row 3? 17:35:34

16 Q. Correct. 17:35:35

17 A. Well, row 3 is telling you that -- it's 17:35:36

18 identifying the firms that are going to be most 17:35:39

19 affected by the cold calling and the anti-cold 17:35:42

20 calling agreements. It's those firms that would 17:35:47

21 have been -- that were hiring substantially who 17:35:50

22 probably would have been doing a cold calling. So 17:35:52

23 you raise another possibility, that it could be -- 17:35:55

24 another variable you might explore is the number of 17:35:58

25 new hires in total -- 17:36:01

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1 Q. What do you mean by, "substantial number of 18:38:15
2 employees"? 18:38:16

3 A. Well, footnote 129 says -- in referencing 18:38:23
4 this Google document it indicates, "Our research 18:38:28
5 indicates that Google continues to be one of the top 18:38:30
6 organizations targeted by Facebook recruiting 18:38:34
7 efforts. We estimate 20 percent of new Facebook 18:38:36
8 employees in 2010 were recruited from Google." 18:38:39

9 Q. SO, does the effect of cold calling on 18:38:42
10 compensation firm-wide depend on substantial 18:38:44
11 recruiting from a competitor? 18:38:47

12 A. Does the effect of cold calling -- could 18:38:57
13 you repeat that sentence? I can't quite 18:39:00
14 interpret -- 18:39:03

15 Q. Sure. You talk about a firm-wide increase 18:39:05
16 in compensation of 10 percent at Google, right? 18:39:08

17 A. That's correct. 18:39:10

18 Q. And that was a response to the fact that 18:39:11
19 there was substantial recruiting here, 20 percent of 18:39:13
20 the new employees being recruited from a single 18:39:17
21 employer? 18:39:20

22 A. Correct. 18:39:21

23 Q. And so you'd agree with me that the 18:39:21
24 circumstance of the substantial recruiting, Facebook 18:39:26
25 targeting Google, had an impact on Google's decision 18:39:33

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1 A. Correct. 18:43:47

2 Q. Some may get zero percent, some may get 18:43:48

3 double -- 18:43:50

4 A. Correct. 18:43:50

5 Q. -- the target, correct? 18:43:50

6 A. Yeah. 18:43:51

7 Q. So this is unique. This went 10 percent to 18:43:52

8 everybody, correct? 18:43:55

9 MR. GLACKIN: Objection -- 18:43:57

10 MR. PICKETT: The Google -- 18:43:58

11 MR. GLACKIN: -- compound. 18:43:58

12 THE WITNESS: I mean, yeah, in the absence 18:43:59

13 of 10 percent. This is unusual and unique. 18:43:59

14 BY MR. PICKETT: 18:44:03

15 Q. So only across -- the only strictly 18:44:03

16 across-the-board raise was this one by Google in 18:44:04

17 response to Facebook? 18:44:08

18 A. That's correct. 18:44:09

19 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

23 Q. Now, let me ask you to look at a Google 18:44:22

24 exhibit that you cite. It's -- we'll call it 18:44:30

25 Exhibit 88. It's G-O-O-G, High-Tech 00193217. It's 18:44:35

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1 decisions based on internal equity is fraud; is that 18:52:27
2 your testimony? 18:52:31

3 A. I don't know who the author is, is my 18:52:31
4 testimony. I agree that this apparently is a 18:52:32
5 statement about why internal equity is a fraud 18:52:34
6 method in making pay decisions. 18:52:39

7 Q. Right. 18:52:42

8 A. But I don't know the materiality of that -- 18:52:42
9 of this document. 18:52:43

10 Q. And do you agree that one could conclude 18:52:47
11 that internal equity is not an appropriate concept 18:52:51
12 to follow based on the three reasons listed under A, 18:52:54
13 B, C? 18:52:57

14 A. I completely don't agree with that. 18:52:58

15 Q. Why not? 18:53:00

16 A. Because there's reasons for internal 18:53:01
17 equity. There are reasons why you don't want to 18:53:03
18 have it, and you've got three of them. But there 18:53:04
19 are reasons to have internal equity as well. 18:53:08

20 Q. And couldn't you -- I'm sorry, go ahead. 18:53:10

21 A. You've got to weigh one with the other. 18:53:11

22 Q. Couldn't a rational firm conclude that it 18:53:13
23 wasn't going to follow internal equity. Rather, it 18:53:16
24 would take into consideration the natural variance 18:53:18
25 of employees? It would take into account the 18:53:20

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1 philosophy paid for performance and it would look to 18:53:26
2 external marketing conditions. Would that be 18:53:30
3 rational? 18:53:33

4 A. And let's add "E" or "D" in place, which is 18:53:34
5 it would ignore the discomfort that would be caused 18:53:36
6 by employees who were left behind in this pay 18:53:36
7 scheme. And that might all -- it might affect their 18:53:40
8 productivity. That's the whole point of internal 18:53:44
9 equity. 18:53:47

10 Q. If this was -- 18:53:47

11 A. This lists the reasons why internal equity 18:53:47
12 is not a good idea, but there's a list of reasons 18:53:49
13 why internal equity considerations is a good idea. 18:53:51
14 You have to really wonder if there's the other. 18:53:57

15 Q. If this were, in fact, Intuit's policy, 18:53:59
16 would it make a difference to your opinion? 18:54:01

17 A. It would make Intel less likely to have the 18:54:05
18 impact of anti-cold calling agreements spread across 18:54:10
19 all members of the firm. 18:54:15

20 Q. Intuit -- 18:54:19

21 A. Spreading -- yeah. Because the spreading 18:54:20
22 is due to the internal equity considerations. 18:54:20

23 MR. PICKETT: I've got maybe -- well, I 18:54:25
24 might make 7:00, I might make 7:03. We're very 18:54:31
25 close. 18:54:33

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1 determines who gets paid twice as much as somebody 18:55:40
2 else, that's not up to the individual manager. 18:55:43
3 That's -- that's top level management deciding to 18:55:45
4 structure salaries across grades. 18:55:50

■ ■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]

11 A. That's correct. 18:56:28

12 MR. PICKETT: Let me mark that as Exhibit 18:56:29
13 89. 18:56:56

14 (Exhibit 89 marked for identification.) 18:56:56

15 BY MR. PICKETT: 18:56:56

16 Q. This is a document you relied upon? 18:56:56

17 A. That's correct. 18:56:59

18 Q. If you'll turn, please, to slide 24, Bates 18:57:00
19 numbers ending 661. 18:57:05

20 A. Yes. 18:57:07

■ ■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]
■ ■ [REDACTED] [REDACTED]
■ ■ [REDACTED] [REDACTED]
■ [REDACTED] [REDACTED]

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1 MR. GLACKIN: Objection, foundation. 18:58:52

2 THE WITNESS: Well, I think that perhaps 18:58:58

3 "relatively little" is an overstatement. 18:59:01

4 BY MR. PICKETT: 18:59:06

5 Q. All right. Let's go to the last couple of 18:59:06

6 questions. 18:59:08

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

22 Q. And if you look at Figure 22, one follow-up 18:59:45

23 question on that. At page -- at page 67. 18:59:49

24 A. Yes. 19:00:04

25 Q. Is the undercompensation percentages 19:00:05

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		Page 472
1	equilibrium or not?	19:01:15
2	MR. GLACKIN: Objection, misstates the	19:01:16
3	testimony.	19:01:16
4	THE WITNESS: Well, I've tried to indicate	19:01:19
5	that the right way to think about it is if these	19:01:24
6	transactions are in search of a market equilibrium,	19:01:27
7	then all of the transactions are occurring outside	19:01:30
8	of market equilibrium levels.	19:01:33
9	BY MR. PICKETT:	19:01:35
10	Q. So -- so what is the compensation relative	19:01:35
11	to?	19:01:39
12	MR. GLACKIN: Objection, asked and	19:01:39
13	answered.	19:01:39
14	THE WITNESS: I told you that.	19:01:40
15	BY MR. PICKETT:	19:01:41
16	Q. It's not a market equilibrium, what is it?	19:01:41
17	A. It's -- it's the -- there are two sequences	19:01:43
18	of prices in search of the market equilibrium. One	19:01:45
19	sequence of prices go rapidly to the market	19:01:48
20	equilibrium, another sequence of prices go slowly to	19:01:52
21	market equilibrium. And the gap between those is	19:01:55
22	the -- is what is being reported here.	19:01:57
23	Q. If your conduct regressions came up with a	19:02:01
24	positive conduct coefficient, what would that tell	19:02:04
25	you about the model?	19:02:06

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1 STATE OF CALIFORNIA) ss:
2 COUNTY OF MARIN)
3

4 I, ASHLEY SOEVYN, CSR No. 12019, do hereby
5 certify:

6 That the foregoing deposition testimony was
7 taken before me at the time and place therein set
8 forth and at which time the witness was administered
9 the oath;

10 That the testimony of the witness and all
11 objections made by counsel at the time of the
12 examination were recorded stenographically by me,
13 and were thereafter transcribed under my direction
14 and supervision, and that the foregoing pages
15 contain a full, true and accurate record of all
16 proceedings and testimony to the best of my skill
17 and ability.

18 I further certify that I am neither counsel for
19 any party to said action, nor am I related to any
20 party to said action, nor am I in any way interested
21 in the outcome thereof.

22 IN THE WITNESS WHEREOF, I have transcribed my
23 name this 29th day of October, 2012.
24

25 
ASHLEY SOEVYN, CSR 12019

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